

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Joint Application of Sprint Communications Company L.P. (U-5112) and T-Mobile USA, Inc., a Delaware Corporation, For Approval of Transfer of Control of Sprint Communications Company L.P. Pursuant to California Public Utilities Code Section 854(a)

Application 18-07-011

In the Matter of the Joint Application of Sprint Spectrum L.P. (U-3062-C), and Virgin Mobile USA, L.P. (U-4327-C) and T-Mobile USA, Inc., a Delaware Corporation for Review of Wireless Transfer Notification per Commission Decision 95-10-032

Application 18-07-012

**REPLY OF
JOINT APPLICANTS AND THE CALIFORNIA EMERGING TECHNOLOGY FUND
TO RESPONSES TO MODIFY POSITIONS IN PROCEEDING TO REFLECT
MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA EMERGING
TECHNOLOGY FUND AND T-MOBILE USA, INC.**

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Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure (“Rules”), Sprint Communications Company L.P. (U-5112-C), Sprint Spectrum L.P. (U-3062-C), Virgin Mobile USA, L.P. (U-4327-C) (collectively, “Sprint”), and T-Mobile USA, Inc. (“T-Mobile USA”) (collectively, the “Joint Applicants”) and the California Emerging Technology Fund (“CETF”) (jointly, the “Joint Parties”) respectfully submit this reply to the *Response of the Joint Consumers to Joint Motion of Joint Applicants and the California Emerging Technology Fund to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.* filed on April 23, 2019 (“TURN/Greenlining Response”) and *Opposition of the Public Advocates Office to Motion by CETF and Joint Applicants to Modify* filed on April 23, 2019 (“Cal PA Response”). On April 29, 2019, Administrative Law Judge Bemdeserfer authorized Joint Parties to file this reply.

The Joint Parties’ memorandum of understanding (“Joint Parties’ MOU”) contains voluntary commitments that support the state’s efforts to contribute to closing the Digital Divide in California, promote digital inclusion, increase access for LifeLine and low-income consumers, and expands wireless broadband access throughout California, including in rural and remote areas of the state, and enhance emergency preparedness and response. The commitments are verifiable, enforceable, and will be subject to ongoing monitoring by CETF and the Commission.

Contrary to the allegations in the Cal PA and TURN/Greenlining Responses, Joint Parties used the appropriate procedure to introduce the Joint Parties’ MOU into the record, providing ample opportunity for comment. Indeed, both respondents have followed the same process the Joint Parties use—and that they now criticize here—in prior proceedings. Further, the substantive criticisms lack merit and ignore the many significant consumer benefits that will flow from the Joint Parties’ MOU. Joint Parties urge the Commission to reject these ill-founded Responses.

I. JOINT PARTIES USED AN APPROPRIATE PROCEDURE TO INTRODUCE THE MOU INTO THE RECORD

The Public Advocates Office (“Cal PA”) and The Greenlining Institute and The Utility Reform Network (collectively “TURN/Greenlining”) argue that Joint Parties used an improper procedure to file their *Joint Motion of Joint Applicants and the California Emerging Technology Fund to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the California Emerging Technology Fund and T-Mobile USA, Inc.* (“Joint Motion”). Cal PA and TURN/Greenlining claim that (i) the Joint Parties were required to follow the process for obtaining formal approval of a “settlement” under Commission Rules of Practice and Procedure (“Rules”), Article 12; (ii) the Commission cannot approve the MOU without an Article 12 motion; and (iii) the Commission cannot enforce provisions without an Article 12 motion.

Cal PA and TURN/Greenlining are incorrect regarding each of these points because: (i) rules governing formal settlement are not applicable here; (ii) the procedure used by Joint Parties adheres to Commission precedent and practice in transfer of control proceedings; and (iii) the Commission may, and does, enforce agreements like the Joint Parties' MOU.

A. Joint Parties Are Not Proposing Adoption of Settlement, As Defined in Article 12, So Formal Settlement Procedures Are Inapplicable Here

As an initial matter, the Joint Parties' MOU does not meet the definition of a "settlement" in Rule 12.1 because it is essentially a common position by certain parties,¹ and a recent Commission decision indicates that parties have flexibility about whether to designate agreements as settlements under Rule 12.1.² Moreover, the Commission does not need to reach a conclusion as to whether the Joint Parties' MOU is a settlement. Even if it were a "settlement," Article 12 limits the applicability of its procedural requirements to those situations where parties are requesting that the Commission adopt a settlement agreement.³ Contrary to Cal PA's claim,⁴ Joint Parties' do not seek to have the Commission adopt or approve the Joint Parties' MOU, a point which TURN/Greenlining concedes.⁵ Instead, the purpose of the Joint Motion is to: (i) put

¹ See, e.g., *In re Verizon Communications, Inc.* D.05-11-029, mimeo at 102-103 ("we do not deem the Greenlining Agreement to be a 'Settlement' governed by Rule 51 [i.e., the Commission's predecessor to Rule 12] The Greenlining Agreement constitutes little more than a common position by certain parties and their experts that offers an appropriate way to address issues of specific concern to California communities, including those issues known as 'digital divide issues.'"); *In re Ratemaking Treatment of Southern California Edison*, D.06-11-025 (Southern California Edison submitted revised testimony pursuant to an agreement Cal PA predecessor (DRA) to reduce nuclear decommissioning trust contribution; the Commission determined the agreement was *not* a settlement subject to the Commission's formal settlement rules).

² See *In re Frontier*, D.15-12-005 at 63-64 ("Although the MOUs were not designated 'settlements' by the parties and the parties did not file motions for their approval, they are enforceable contracts and as such have similar practical effects as the Settlements.").

³ See Rule 12.1 ("The motion shall contain . . . the grounds on which adoption is urged.").

⁴ Cal PA Response at 4 ("Similarly, the Commission cannot approve the Agreement . . .").

⁵ TURN/Greenlining at 2 ("it does not appear that the Joint Parties are requesting that the Commission approve the attached MOU...").

the Commission on notice about the Joint Applicants’ agreement with a single intervenor; (ii) demonstrate willingness to have the various voluntary commitments adopted as voluntary conditions in the final decision enforceable by the Commission; and (iii) notify the Commission that CETF has changed its position in these proceedings to now urge the Commission to find the transactions at issue in the public interest. The Joint Motion is thus fundamentally different from Rule 12.1 motions, which parties use to seek Commission adoption of a settlement agreement reflecting “the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding.”⁶

B. The Process Joint Parties Used is Consistent with a Plain Reading of the Rules and Commission Precedent and Policy

Contrary to Cal PA’s characterization, Article 12 processes are not mandatory for all agreements between parties in a proceeding. As the text of the rule makes clear, filing a motion for proposed settlement is optional: “parties *may* ... propose settlements on the resolution of any material issue of law or fact.”⁷ Significantly, the rule does not use the compulsory terms “shall” or “must” in relation to the obligation to file a motion to adopt settlement, but does use these compulsory terms elsewhere in Rule 12.1, indicating that the Commission was intentional in designating the Rule 12.1 settlement adoption process as permissive.⁸

Consistent with the permissive nature of Article 12, settling parties, in practice, follow a variety of approaches for submitting agreements among parties into the record and/or bringing

⁶ Rule 12.1.

⁷ *Id.*

⁸ *Id.*; see also *Tarrant Bell Prop., LLC v. Superior Court*, 51 Cal. 4th 538, 542–43 (2011) (“[W]e ‘ordinarily’ construe the word ‘may’ as permissive and the word ‘shall’ as mandatory, ‘particularly’ when a single statute uses both terms.”).

such agreements to the Commission's attention.⁹ The approaches include but are not limited to attaching agreements to testimony, motions to withdraw, filing an agreement with an opening brief, and filing a motion to modify positions.

In fact, the intervenors objecting to Joint Parties' MOU process here have, at times, themselves not used the process under Article 12 (or its predecessor rules) when entering into agreements with parties in other proceedings. For example, both Cal PA and TURN have entered into agreements with other parties outside of the formal settlement process to resolve issues in other proceedings.¹⁰ Greenlining similarly did not use the formal settlement rule process for agreements it entered into in the *SBC/AT&T* (A.05-02-027) or *Verizon/MCI* (A.05-04-020) transfer of control proceedings in 2005.¹¹

Most recently, in 2015 Greenlining entered into an MOU with Frontier Communications ("Frontier") in the *Frontier/Verizon* transfer of control proceeding, A.15-03-005. The MOU between Greenlining and Frontier was not filed by Rule 12.1 motion. Instead, Frontier filed the

⁹ For example, in the recent merger proceeding of Charter Communications (A.15-07-009), both the City of Gonzales and County of Monterey separately entered into agreements with Charter Communications to resolve various issues, and notified the Commission of these agreements through separate motions to withdraw, which were granted by the presiding Administrative Law Judge. *Motion of the City of Gonzales to Withdraw as a Party in the Matter of Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Service (California) LLC, Advance/Newhouse Partnership, Bright House Networks, LLC, and Bright House Networks Information Services (California), LLC's Joint Application* (March 2, 2016), A.15-07-009; *Motion of the County of Monterey to Withdraw as a Party in the Matter of Charter Communications, Inc., Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Service (California) LLC, Advance/Newhouse Partnership, Bright House Networks, LLC, and Bright House Networks Information Services (California), LLC's Joint Application* (February 11, 2016), A.15-07-009.

¹⁰ See, e.g. *In re New Regulatory Framework*, D.86-12-010, 1986 Cal. PUC LEXIS 754 (PSD (predecessor to Cal PA), TURN, and electric utilities entered into and filed a stipulation, outside of a formal settlement process, resolving material issues in the proceeding, and despite allegations of other intervenors that the stipulation excluded other parties from participation in the stipulation process, the Commission adopted the stipulation in the final decision).

MOU in its supplemental rebuttal testimony.¹² Additionally, as TURN/Greenlining recognize,¹³ in the *Frontier/Verizon* proceeding other parties used the specific “motion to modify positions” process used by Joint Parties here. In that proceeding, CETF and Frontier jointly filed a motion to modify positions in the proceeding to reflect the Memorandum of Understanding between the parties.¹⁴ In the decision approving the merger, the Commission stated:

Although the MOUs were not designated “settlements” by the parties and the parties did not file motions for their approval, they are enforceable contracts and as such have similar practical effects as the Settlements. While they were not provided to other parties for review and comment as were the Settlements, they nonetheless commit Frontier to courses of action that we determine to be necessary in order to render the granting of the application in the public interest. Accordingly, though we will not formally approve the MOUs, we will provide the signatories to the MOUs other than Frontier the same recourse to Commission assistance to enforce the terms of the MOUs as we will provide to the settling parties other than Frontier with respect to enforcing the terms of the Settlements.¹⁵

Similarly, in the *Charter/TWC* transfer of control proceeding (A.15-07-009), CETF and the National Diversity Coalition each filed motions to modify positions in the proceeding to

¹¹ See *In re Verizon Communications, Inc.* D.05-11-029 at 26 (Greenlining introduced its agreement with applicant as an exhibit to its opening brief); see *In re SBC Communications, Inc.* D.05-11-028, Section 2 (Greenlining filed its agreement with applicant outside of the formal settlement process, concurrent with opening briefs).

¹² See Exhibit D, Memorandum of Understanding Between the Greenlining Institute and Frontier Communications to Supplemental Reply Testimony of Melinda White on Behalf of Frontier Communications Corporation (Sept. 22, 2015), A.15-03-005.

¹³ TURN/Greenlining Response at 3 (“Joint Consumers acknowledge that parties to a proceeding can change their positions during a proceeding and, as Applicants and CETF note, the Commission has, in the past, granted motions similar to the one at issue.”).

¹⁴ See Joint Motion of Frontier Communications Corporation, Frontier Communications of America, Inc. (U 5429 C) and the California Emerging Technology Fund to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the Parties (Oct. 23, 2015), A.15-03-005.

¹⁵ *In re Frontier*, D.15-12-005, mimeo at 64-64.

reflect Memorandum of Understandings each party had reached with Charter.¹⁶ Significantly, none of these three motions to modify was denied or rejected by the Commission on the grounds that they should have been Rule 12.1 settlement motions. In fact, one of the motions was affirmatively granted,¹⁷ and in both *Charter/TWC* and *Frontier/Verizon* the final decisions adopted the commitments set forth in the MOUs as conditions to the approval of the mergers and attached the MOUs as exhibits to the decision.¹⁸ Thus, arguments by Cal PA and TURN/Greenlining that Rule 12.1 must be used are belied by their own prior practices and are without merit.

C. Consistent with Commission Precedent, the Commission May Enforce the Joint Parties' MOU Even If Not Submitted Under Formal Settlement Process

TURN/Greenlining indicate that the Joint Motion does not request that the terms of the Joint Parties' MOU be made enforceable.¹⁹ However, Joint Parties' have made clear that they intend for the Joint Parties' MOU to be enforceable by the Commission.²⁰ Moreover, contrary to

¹⁶ See Joint Motion of Charter Communications, Inc. Charter Fiberlink CA-CCO, LLC (U6878C) and The California Emerging Technology Fund To Modify Positions In Proceeding To Reflect Memorandum of Understanding Between The Parties, A.15-07-009 (April 7, 2016); Joint Motion of Charter Communications, Inc. Charter Fiberlink CA-CCO, LLC (U6878C) and the National Diversity Coalition to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the Parties (Feb. 3, 2016), A.15-07-009 (Feb. 3, 2016).

¹⁷ Presiding Officer's Ruling Granting Joint Motion of Charter Communications, Inc. and Charter Fiberlink CA-CCO, LLC (U6878C) and the National Diversity Coalition to Modify Positions in Proceedings to Reflect Memorandum of Understanding Between the Parties, A.15-07-009 (Feb. 17, 2016).

¹⁸ See *In re Charter*, D.16-05-007, mimeo at 70-73, Ordering Paragraph 1; *In re Frontier*, D.15-12-005, mimeo at 82, Ordering Paragraph 13.

¹⁹ See TURN/Greenlining Response at 3.

²⁰ Joint Motion at 4 ("The Joint Parties also wish to emphasize that the commitments in the MOU are verifiable, enforceable, and will be subject to ongoing monitoring by CETF and the Commission."); Joint Parties' MOU at 15 ("T-Mobile agrees that the CPUC may enforce these voluntary settlement conditions....").

Cal PA's assertions,²¹ the Commission can, and does, enforce agreements among parties, even where those agreements are brought to the Commission's attention using an MOU process with an accompanying motion, as Joint Parties used here.²² As noted above, in the *Frontier/Verizon* transfer of control proceeding, CETF and Frontier entered into a MOU and filed a similar motion to the one at issue here.²³ Two years after the proceeding ended and the transfer of control was approved, CETF filed a petition for modification and sought the Commission's assistance in enforcing its MOU.²⁴ The assigned Administrative Law Judge agreed that the MOU was enforceable.²⁵

II. THE PROCESS JOINT PARTIES USED ALLOWS AMPLE OPPORTUNITY FOR COMMENT—NO FURTHER PROCESS OR HEARINGS ARE WARRANTED

Cal PA and TURN/Greenlining have not been deprived of an opportunity to “comment” or to “meaningfully respond” to the Joint Parties’ MOU, as those parties claim.²⁶ Joint Parties filed the Joint Parties’ MOU with the Commission nearly three weeks in advance of the deadline for opening briefs in large part to give intervenors adequate notice and opportunity to respond to the Joint Parties’ MOU in their opening briefs. Notably, this is far more time than ORA (Cal

²¹ Cal PA Response at 2 (“Joint Parties would deprive other parties of the opportunity to comment on the agreement, and deprive the Commission of the opportunity to fulfill its legal obligation to assess the Agreement’s reasonableness and potential to provide public benefits. At the same time, the Joint Parties want the Commission to maintain jurisdiction and responsibility for enforcing the Agreement.”).

²² See, e.g., *In re Frontier*, D.19-03-017 (approving settlement between Frontier and CETF over allegations that Frontier had not fulfilled its obligations under MOU between Frontier and CETF).

²³ See Joint Motion of Frontier Communications Corporation, Frontier Communications of America, Inc. (U 5429 C) and the California Emerging Technology Fund to Modify Positions in Proceeding to Reflect Memorandum of Understanding Between the Parties (Oct. 23, 2015), A.15-03-005.

²⁴ See Administrative Law Judge’s Ruling an Order to Show Cause, A.15-03-005 (Oct. 25, 2018)

²⁵ *In re Frontier*, D.15-12-005 mimeo at 63-64 (“Although the MOUs were not designated ‘settlements’ by the parties and the parties did not file motions for their approval, they are enforceable contracts and as such have similar practical effects as the Settlements.”).

²⁶ See Cal PA Response at 2; TURN/Greenlining Response at 4.

PA's predecessor) and TURN afforded parties to comment on their settlement agreement in *Frontier/Verizon*; in that case TURN and ORA filed the settlement agreement on October 30, 2015, and filed a motion to reduce the comment deadline to November 3 (4 days after the settlement agreement was filed).²⁷

Moreover, TURN/Greenlining appear to conveniently forget their own prior practices when they allege that because the Joint Motion has not been granted yet, it will make brief writing on these issues "futile."²⁸ In *Charter/TWC*, Greenlining commented on the Charter/CETF MOU and the Charter/NDC MOU in its brief,²⁹ and there is no reason parties could not do the same here. In fact, both Cal PA and TURN/Greenlining have taken the opportunity to provide substantive comments on certain aspects of the Joint Parties' MOU in their Responses.³⁰

There is also no need for additional processes provided for in Article 12 (including a settlement conference, discovery, or more hearings). Cal PA and TURN/Greenling have had plenty of opportunity to discuss settlement generally with Joint Applicants. Additionally, CETF notified Cal PA, TURN, and Greenlining of the possibility of the Joint Parties' MOU prior to signing and subsequently reached out to intervenors after the agreement was executed with an offer to answer questions and explain benefits. Moreover, contrary to Cal PA's assertions, none of the "issues" it raises with the Joint Parties' MOU justifies additional discovery or more hearings. Under Rule 12.3, hearings are unnecessary where there are "no material contested

²⁷ Joint Motion for Order to Shorten Time on Comments to Joint Motion of Frontier Communications Corporation, Frontier Communications of America, Inc., The Utility Reform Network, the Office of Ratepayer Advocates, and the Center for Accessible Technology for Approval of Partial Settlement (Oct. 30, 2015), A.15-03-005.

²⁸ TURN/Greenlining Response at 3-4.

²⁹ See Opening Brief of The Greenlining Institute at 3-7

³⁰ See Cal PA Response at 5-9; see TURN/Greenlining Response at 8.

issues of fact.” TURN/Greenlining do not dispute any facts in the Joint Motion. From a careful reading of their Response, it appears that they actually seek a vehicle to criticize the various settlement terms³¹ but they have that opportunity through their Responses, the opening briefs,³² and the reply briefs.

III. THE SUBSTANTIVE CRITICISMS OF THE JOINT PARTIES’ MOU ARE MERITLESS

As described above and in the Joint Motion, there are substantial benefits to the Joint Parties’ MOU. In addition to the erroneous assertions regarding the procedural aspects of the Joint Motion, the substantive criticisms of the Joint Parties’ MOU put forth by Cal PA and TURN/Greenlining lack merit.

Monies Payable to CETF: Both Cal PA and TURN/Greenlining criticize the \$13 million provided over 5 years to CETF for operating costs, implying that it is excessive.³³ CETF is an experienced, well-respected nonprofit organization that often intervenes in communication mergers in order to provide recommendations on broadband access and digital adoption issues. This amount provided to CETF is substantially lower than the amount approved by the

³¹ Cal PA mentions only one fact regarding capital expenditure in the Joint Parties’ MOU that is allegedly “inconsistent” with the record, yet Cal PA use of the word “appears” indicates it is not sure about the inconsistency. Cal PA Response at 8-9. Moreover, Cal PA is incorrect that the capital expenditure is inconsistent with the record—indeed, the capital expenditure figure listed in the Joint Parties’ MOU is within the range of capital expenditure presented in the *Rebuttal Testimony of G. Michael Sievert Submitted on Behalf of T-Mobile USA, Inc.* Hearing Ex. Jt. Appl. 2-C at 14:3-4.

³² The fact that TURN/Greenlining and Cal PA apparently decided not to comment on the Joint Parties’ MOU in their opening briefs does not diminish the fact that all parties have significant opportunity to comment on the merits of the Joint Parties’ MOU.

³³ Cal PA Response at 5; TURN/Greenlining Response at 8.

Commission for the initial funding of CETF in 2005-2006, which was \$60 million to be paid over five years by AT&T and Verizon as a condition of approving transfers of control.³⁴

Moreover, the funds provided under the Joint Parties' MOU will be put toward the significant costs of CETF's operations, including activities tailored to the Joint Parties' MOU such as facilitating consultations with regional consortia, holding annual meetings regarding household broadband adoption, advising on marketing strategies for low-income communities, facilitating meetings with community media for target populations, as well as other activities to fulfill its mission ranging from public policy, awareness and education, digital inclusion programs, and grant making to non-profit community organizations and public agencies.³⁵ Further, unlike TURN/Greenlining, CETF has been found not to be eligible for intervenor compensation at the Commission, and thus, funding for its operational costs must be obtained from grants or other sources such as MOUs and settlements. Finally, CETF is accountable to the Commission and Legislature for its activities and spending. As required by law, every year,

³⁴ CETF was established by the Commission as a nonprofit corporation, focusing on issues such as broadband access, and on digital adoption/digital equity issues, pursuant to decisions of the Commission in approving the mergers of SBC-AT&T (D.05-11-028, Nov. 18, 2005) and Verizon-MCI (D.05-11-029, Nov. 18, 2005). As a condition of approval of those two mergers, AT&T and Verizon were required to contribute a total of \$60 million to form a non-profit organization known as CETF for the purpose of achieving ubiquitous access to broadband and advanced services in California, particularly in underserved communities, through the use of emerging technologies by 2010. CETF was directed to adopt the goals of expanding adoption and usage of broadband technology in addition to promoting ubiquitous access. See <http://www.cetfund.org/aboutus/history>.

³⁵ See Joint Parties' MOU at 7-13. Additionally, CETF works on digital adoption grants includes significant program work: (1) preparing a grant notice and informational materials to potential community-based organizations ("CBOs"); (2) identifying qualified CBOs to perform the work, drafting and executing grant agreements with grantees; (3) coaching grantees on a weekly basis to adjust strategies and address unexpected issues; (4) working with various providers to handle customer complaints that are raised through grantee channels; (5) working with other institutions (i.e. schools, social services agencies, state associations that serve low income populations, etc.) to obtain access to target low-income communities; (6) developing marketing plans and promotional materials for affordable offers; (7) monitoring progress by reviewing required reports from grantees; and (8) managing quarterly learning communities for the grantees.

CETF provides a public report on its activities to the California Public Utilities Commission, which in turn reports to the Legislature.³⁶

Pricing Commitment: One important public benefit of the Joint Parties’ MOU is the Pricing Commitment, which protects Sprint and T-Mobile customers from any price increases for a full three years after the merger, by preserving existing rate plans unless better rate plans are made available.³⁷ Cal PA criticizes the Pricing Commitment, calling it vague and “unenforceable” and speculating that it is “likely that New T-Mobile would offer more expensive rate plans with slightly better speeds and call that a “Better Rate Plan.”³⁸

In fact, the Joint Parties’ MOU addresses Cal PA’s enforceability concerns by providing for an annual compliance report to track pricing.³⁹ The Pricing Commitment expressly provides that all legacy rate plans for Sprint and T-Mobile customers will continue to be made available for a full 3 years after the merger—ensuring a low price for the same or more data.”⁴⁰ The notion that New T-Mobile could justify a price increase based on “better speed” is refuted by this language. Cal PA imagines potential concerns with the Pricing Commitment only by ignoring the express words of the commitment.

LifeLine: As an initial matter, New T-Mobile has committed to offering LifeLine service in the California market indefinitely at rates, terms, and condition no less favorable than those offered by Assurance Wireless today,⁴¹ which is precisely the condition that Cal PA

³⁶ See Pub. Util. Code § 910.4; *see also* <http://www.cetfund.org/annualreports>.

³⁷ See Joint Parties’ MOU at 4, Section I, and Attachment A.

³⁸ Cal PA Response at 6.

³⁹ Joint Parties’ MOU at 14, Section X.

⁴⁰ Joint Parties’ MOU at 2; *see also* Hearing Tr. at 387:4-18 (Sievert recross).

⁴¹ Joint Parties’ MOU at 5.

advocates that the Commission adopt for LifeLine.⁴² In the MOU, New T-Mobile has gone beyond maintaining the status quo by committing to offer additional benefits to new and existing LifeLine customers to include a significantly larger geographic footprint for wireless customers,⁴³ an upgraded data allowance for all existing customer to 3 Gigabytes,⁴⁴ and offer new free handsets that will work on the New T-Mobile network.⁴⁵ New T-Mobile has also made commitments to grow the Assurance Wireless LifeLine customer base, to expend significant dollars (up to \$5 million) doing outreach marketing and promotion of LifeLine and to commit \$4.5 million to digital training for a sizable number of LifeLine customers.⁴⁶

Rather than focusing on the substantial merits of Joint Applicants' LifeLine commitments and the many consumer benefits that the transaction will bring for LifeLine customers, Cal PA and TURN/Greenlining offer several criticisms of the Joint Parties' MOU regarding commitment for New T-Mobile to add 332,500 new LifeLine and low-income customers over 5 years, for a total of no less than 675,000 LifeLine and low-income customers at the end of 5 years. Cal PA mistakenly asserts that the customer calculations are incorrect, by conflating gross and net additions.⁴⁷ The Joint Parties' MOU, in Section III.A, expressly calls for New T-Mobile to make good faith efforts to add 332,500 new *gross* additions over 5 years, for a total of no fewer than 675,000 enrolled in the program at the end of 5 years, *net* after accounting for projected customer

⁴² Cal PA Opening Brief at 52.

⁴³ See *Rebuttal Testimony of Marie R. Sylla Dixon*, Hearing Ex. Jt Appl-08C at Attachment A.

⁴⁴ Joint Parties' MOU at 4.

⁴⁵ Id. at 5; *Rebuttal Testimony of Marie R. Sylla Dixon* at 3:24:26.

⁴⁶ Joint Parties' MOU at 5-6, 8.

⁴⁷ Cal PA Response at 6, note 11 ("The record does not support that adding 332,500 new (additional) low-income households will come to a total of 'no less than 675,000 enrolled LifeLine/low-income households' in California. In fact, the existing number of Sprint LifeLine customers is roughly 500,000, thus New T-Mobile will only have to add roughly 175,000 new households to meet this goal.").

churn. Cal PA’s failure to distinguish between gross and net additions accounts for its misunderstanding.

TURN/Greenlining have a different objection. They allege that there is no value to the target of 332,500 additional customers, as described in the Joint Parties’ MOU, because the Boost pilot has a similar target of 350,000.⁴⁸ However, TURN/Greenlining overlook two key facts. First, not all customers signing up under the Boost pilot will qualify to meet New T-Mobile’s target of 332,500 gross additions—only those signing up on the lowest plan (\$20 or less).⁴⁹ Second, the Joint Parties’ MOU goes further than the Boost pilot because, as noted above, New T-Mobile not only has the goal of signing up 332,500 additional customers, it also has a goal of no less than 675,000 enrolled LifeLine/low-income households at the end of five years—which is after the Boost pilot is scheduled to end.

Cal PA also criticizes the LifeLine provisions as including a rate plan of \$20/month, stating that “evidence that increasing subscribership to plans that cost \$20 or less helps low income customers is absent from the record.”⁵⁰ However, in approving the Boost pilot program the Commission expressly found that the Boost pilot (which includes the Boost subsidized \$20 plan) will increase participation by underserved populations, including low-income customers.⁵¹

⁴⁸ TURN/Greenlining Response at 8.

⁴⁹ See Joint Parties’ MOU at 5.

⁵⁰ Cal PA Response at 6. CETF’s CEO Sunne Wright McPeak testified before the Commission in the *Frontier/Verizon* Order To Show Cause proceeding that \$20 or below is an affordable broadband rate according to CETF studies.

⁵¹ See *Boost Pilot*, D.19-04-021, mimeo at 41 (Conclusions of Law 1-4):

1. The California LifeLine Program, consistent with the Moore Act, seeks to make high-quality basic service affordable for low-income Californians
2. D.18-12-019 authorizes the use of pilot programs to increase Program participation by lowering barriers, increasing overall participation, and participation by unserved or underserved communities, increasing the number and types of service

It is both reasonable and in the public interest for the Commission to support New T-Mobile's participation in the Boost pilot program, an important Commission initiative, which Joint Applicants strongly support.

Infrastructure: Cal PA's proffered critiques of the network buildout provisions of the Joint Parties' MOU suffer similar infirmities. For example, Cal PA asserts that the Joint Parties' MOU provides network speeds of "only" 100 Mbps by 2024, less than the 150 Mbps promised.⁵² In fact, New T-Mobile has indicated that its average network speed in California by 2024 will be 300 Mbps, not 150, and that is what the Joint Parties' MOU provides.⁵³

Cal PA also erroneously argues that the speed commitment is diminished by the requirement (which it mischaracterizes) that every cell site tested achieve at least 80% of the target network average.⁵⁴ Given that the Joint Parties' MOU unequivocally requires that "New T-Mobile will commit to achieve the average (mean) speed tier ... across all sites" each year,⁵⁵ the fact that the agreement further provides that every site must reach at least 80% of the specified speed tier does not reduce New T-Mobile's obligation, as Cal PA seems to have mistakenly concluded. Rather it poses an additional obligation, designed to minimize network variability. For example, in 2021, not only must New T-Mobile hit average (mean) speeds of 100 Mbps across the entire 5G network, but to ensure that it does not do so by building a few

providers offering California LifeLine, and expanding California LifeLine participants' access to retail offerings in the market.

3. D.18-12-019 sets forth the criteria that pilot program proposals must meet for Commission consideration and authorization.
4. The Boost pilot program proposal meets the criteria established by D.18-12-019 and should be authorized.

⁵² See Cal PA Response at 7.

⁵³ Joint Parties' MOU at 11, Section VII.C, and Exhibit B; *see also Rebuttal Testimony of Neville Ray on Behalf of T-Mobile USA, Inc.*, Hearing Ex. Jt. Appl. 3-C at 4:14-15.

⁵⁴ See Cal PA Response at 7.

⁵⁵ Joint Parties' MOU at 11.

very fast sites and many much slower sites. Instead, New T-Mobile is under an additional obligation that every single site must demonstrate at least 80 Mbps in speed testing. Cal PA's claim that New T-Mobile will provide less network speed than it promised through the Joint Parties' MOU is without merit.⁵⁶

Digital Inclusion: Cal PA complains that the commitment for Digital Inclusion Policy and Programs lacks specificity and mechanism to evaluate and monitor these programs.⁵⁷ However, Joint Parties' MOU provides significant and adequate detail, including details on school-based programs to incorporate technology into teaching and learning with significant parent engagement.⁵⁸ Moreover, Cal PA conveniently ignores, again, that agreements in other mergers have provided comparable funding to CETF for digital programs with less specificity. For example, *Charter/TWC* approval was conditioned on \$32.5 million to CETF, approval in *SBC/AT&T* was conditioned on \$45 million to CETF (with only \$5 million earmarked), and in *Verizon/MCI*, \$15 million. Further, oversight mechanisms are built into the CETF not profit model with public annual reporting to the Commission and the Legislature

Emergency Preparedness: Both Cal PA and TURN/Greenlining criticize the emergency preparedness and response conditions in the Joint Parties' MOU. Cal PA alleges that the commitment to increase mobile cell sites by 50% has no basis in the record.⁵⁹ And TURN/Greenlining also characterize the commitments as limited and not in the public interest.⁶⁰ However, notably Cal PA's testimony on Sprint and New T-Mobile's emergency preparedness

⁵⁶ Also CETF notes that this requirement takes into account permitting and siting issues that may be encountered by New T-Mobile as it proceeds to upgrade certain cell sites to 5G.

⁵⁷ See Cal PA Response at 6-7.

⁵⁸ See Joint Parties' MOU at 7-8.

⁵⁹ See Cal PA Response at 7.

⁶⁰ See Joint Consumer Response at 8.

found “Sprint and T-Mobile have robust emergency response plans.”⁶¹ Cal PA’s witness further concluded that “if the Commission fails to deny the merger, it must ensure that Sprint’s inventory of portable generators, COWs and COLTs are maintained so that public safety is not put at risk by decreased emergency readiness.”⁶² Notably, the Joint Parties’ MOU not only meets Cal PA’s recommended condition, it exceeds it by committing to add additional COWS and COLTs and portable satellite and microwave links.⁶³ It is difficult to see how Cal PA can legitimately criticize a commitment that exceeds what it claimed was needed to maintain public safety.⁶⁴

Rural Fairgrounds: TURN/Greenlining complain of the lack of specificity as to which the commitment to bring 5G wireless coverage to 10 rural county fairgrounds.⁶⁵ Again, TURN/Greenlining’ criticism are difficult to understand, given the numerous wildfire, flooding and other natural disasters that have occurred in the state in recent years. Although New T-Mobile is given some latitude to pick the 10 fairgrounds to connect, the Joint Parties’ MOU includes very specific parameters within which New T-Mobile must make its selection. Specifically, the fairgrounds to be connected will be selected from a list provided by CETF and the California Department of Food and Agriculture (“CDFA”, the state agency that administrate fairgrounds and expositions) of 24 specified California fairgrounds (listed in Attachment D to the Joint Parties’ MOU) that have current broadband coverage at speeds below 25 Mbps. CETF provided information from CDFA listing which of the fairgrounds with poor broadband coverage

⁶¹ *Public Advocates Office Testimony on Service Quality and Public Safety for the Proposed Transfer of Control for Sprint to T-Mobile* (Cameron Reed), Hearing Ex. Pub Adv. 6-C at 36:21-22.

⁶² *Id.* at 38:4-7.

⁶³ Joint Parties’ MOU at 13.

⁶⁴ Notably, TURN elected not to file any testimony in the proceeding, so at the time the Joint Parties’ MOU was executed it had taken no position on the record on this issues.

had also been used as evacuation, emergency response, and national stockpile sites in the last five years. Priority consideration will be given to those fairgrounds used to stage emergency response and those for which the county board has developed a plan for digital inclusion. Further, the selection can be made only after New T-Mobile consults with both CETF and the Regional Rural Broadband Consortia.⁶⁶ It bears noting that this commitment is in fact significantly more detailed than many commitments in other transfer of control proceedings, including provisions agreed to by Cal PA and TURN.⁶⁷

Infrastructure in Rural Areas: Cal PA mistakenly claims that New T-Mobile commitment to prioritize 5G development in 10 rural areas means that New T-Mobile will build fewer cell sites in rural areas than it committed to in its testimony. Again, Cal PA misreads the Joint Parties' MOU—New T-Mobile's commitment is to build out those 10 areas sooner than otherwise planned. This additional commitment to rural areas does not reduce or otherwise detract from the overall infrastructure build commitment, and is important to the goal of AB 1665 to bring broadband to 98% to all California residents in every region.

Other Criticisms: TURN/Greenlining use the Response to explore issues unrelated to the Joint Motion. They claim that T-Mobile omitted from its MOU with National Diversity Council its waiver of obligation to repay certain intervenor compensation funds, but, in fact, the waiver by T-Mobile was not a condition of entering that MOU, and TURN/Greenlining mischaracterize the amount waived.⁶⁸

⁶⁵ See TURN/Greenlining Response at 8.

⁶⁶ See Joint Parties' MOU at 13.

⁶⁷ See, e.g., *In re Charter*, D.16-05-007, mimeo at 58 ([ORA proposed condition:] "During the two years following the closing of the Transaction, New Charter shall reduce service outages as much as possible.").

⁶⁸ See TURN/Greenlining Response at 7, fn. 17.

IV. CONCLUSION

For the reasons set forth above, Joint Parties seek, without any further process or hearings, to ensure that their current positions set forth in the Joint Motion are properly reflected on the record.

Respectfully submitted this 3rd day of May 2019.

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⁶⁹ Pursuant to Rule 1.8(d), this document is signed on behalf of Joint Parties.